

EXHIBIT 6-H

PREVAILING WAGE COMPLIANCE TERMINOLOGY

Apprentice

- (1) a person employed and individually registered in a bona fide apprenticeship program registered with the United States Department of Labor, Employment and Training administration, Bureau of Apprenticeship and Training or with a State apprenticeship agency recognized by that Bureau or
- (2) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in a program but who has been certified by the Bureau.

Basic Rate - For overtime pay purposes, the basic rate is the greater of:

- (1) the contract minimum rate;
- (2) the minimum prevailing wage rate under Section 18-2-401, MCA, or
- (3) the rate actually being paid.

Bona fide Resident of Montana - a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana (from section 18-2-401, MCA).

Building or Work - These terms generally include construction activity as distinguished from manufacturing, furnishing of materials or servicing and maintenance work. The terms include, without limitation, buildings, structures and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, scaffolding, drilling, blasting, excavating, clearing and landscaping.

Construction Services – Work performed by an individual in construction, heavy construction, highway construction, and remodeling work. The term does not include contracts with commercial suppliers for goods and supplies.

Contract - any prime contract which is subject wholly or in part to the prevailing wage

provisions of Sections 18-2-401 through 18-2-432, MCA, and any subcontract of any tier thereunder, let under the prime contract.

Contractor - Any person, corporation, partnership or unincorporated association that holds a TSEP-assisted construction contract or subcontract regardless of tier. A state or local government is not regarded as a contractor in situations where construction is performed by its own employees.

District - a prevailing wage rate district established as provided in 18-2-411, MCA.

MDOC - Montana Department of Commerce.

Days - Calendar days.

Deduction - any sum of money which the contractor, or someone else in the chain of payment responsibility, withholds from the wages due an employee.

Discrimination - A distinction in treatment based on race, color, religion, handicap, marital status, age, sex or national origin.

Equal Employment Opportunity - The absence of partiality or distinction in employment treatment, so that the rights of all persons to work and advance on the basis of merit, ability and potential is maintained.

Fringe Benefits - fringe benefits include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other federal or state law.

Heavy and Highway Construction Wage Rates - wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States Department of Labor and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, or utility rights-of-way (from Section 18-2-401, MCA).

Independent Contractor - For Montana workers' compensation purposes, a contractor who:

- (1) is free from control and direction (both under the terms of the written contract or supported by the facts); and
- (2) has an independently established trade, occupation, business or profession.

Contractors must meet both tests to qualify as an independent contractor.

Laborer or Mechanic - includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices, or trainees. The term does not apply to workers whose duties are primarily administrative, executive or clerical, rather than manual. Working foremen who devote more than 20 percent of their time during a work week to mechanic or laborer duties, are considered laborers and mechanics for the time spent on such duties.

Materials Supplier - A vendor engaged in sales to the public from an established place of business or source of supply.

MDLI - Montana Department of Labor and Industry.

Nonhauling Equipment Owner-Operators - Owner-operators of nonhauling equipment (in general, equipment other than trucks) are considered to be employees, not subcontractors, and are covered by prevailing wage rate decisions.

Project Location – The construction site where a public works project involving construction services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and specifications.

Public Works Contract – A contract for construction services in which the total cost of the contract is in excess of \$25,000.

Site of Work – In March 1998, The State's Attorney General issued Opinion No. 12. The opinion held "The prevailing wage requirements in 18-2-403(2)(b) apply to fabrication of materials performed off-site by a contractor for installation or use at the site of construction under a public works contract. The prevailing wage district with respect to such off-site services is the district where the on-site construction occurs."

In general, the "site of the work" is the physical place or places where the construction called for in the contract will remain when work on it has been completed and other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be

said to be included in the "site".

Not included in the "site of the work" are permanent home offices, branch plant establishments, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular project. Fabrication plants of a contractor or subcontractor are not included in the "site of the work," if the materials fabricated at the plant for the project are materials that are normally produced by the contractor or subcontractor as a commercial supplier. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work," even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

Special Circumstances – All work performed at a facility that is built or developed for a specific Montana public works project and that is located in a prevailing wage district that contains the project location or that is located in a contiguous prevailing wage district.

Standard Prevailing Wage -

- (1) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or
- (2) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the U.S. Department of Labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under his part. In each district, the standard prevailing rate of wages is a weighted average wage rate based on all of the hours worked on work of a similar character performed in the district.

When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the U.S. Department of Labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract (from Section 18-2-401, MCA).

Subcontractor - An individual or organization under contract with the prime contractor or another subcontractor to perform a portion of the work.

Supplemental Payroll - An additional payroll used to correct a deficiency or omission on a certified payroll.

Suppliers - Contracts or subcontracts for furnishing supplies and equipment, including installation where the installation requires only an incidental amount of work are not covered by wage rate decisions.

Trainee - means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, as meeting its standards for on-the-job training programs and which has been so certified by that Bureau.

Truck Drivers Owner-Operators - Truck owner-operators are not subject to the state prevailing wage rates prescribed by the MDLI. Such owner-operators shall be listed on payrolls with the notation "owner-operator" after each name. Neither hours worked nor wages paid need be shown.

TSEP - Treasure State Endowment Program, administered by the Montana Department of Commerce.

Wage Determination - the original prevailing wage decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision.

Wages - the basic hourly rate of pay, any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan or program, and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected.

Work of a Similar Character - work on private or commercial projects as well as work on public projects (from Section 18-2-401, MCA).